Mills on Cosmopolitan Sovereignty

Alex Mills (University College London) has posted Normative Individualism and Jurisdiction in Public and Private International Law: Toward a 'Cosmopolitan Sovereignty'? on SSRN. The abstract reads:

This paper examines one aspect of the role of the individual in international law, through analysis of the increasing recognition of individual rights in the context of jurisdiction in both public and private international law. Jurisdiction has traditionally been considered in international law as a right or power of states. The challenge to this traditional approach has arisen both at the international level and also within states, through the rise in theory and practice of doctrines of 'denial of justice', 'access to justice' and 'party autonomy', which reflect the increasing treatment of jurisdiction as a matter of individual right rather than state power. These developments arguably signify a transformation in the status of individuals at both international and national levels, from the passive objects of jurisdictional regulation to active rights-holders.

The analysis in this paper therefore highlights a challenge which cuts across the dual aspects of sovereignty – as international law increasingly recognises the power of legal persons beyond the state, this also provides a challenge to the claims for exclusive legal authority within states. This can also be described as the recognition of the individual, alongside the state, as a 'sovereign' actor, or as the recognition of 'normative individualism' in international and domestic law. The increased recognition of the individual in international law is a key feature of the arguments of cosmopolitan legal theorists – the challenge of normative individualism may therefore further be described as the question of whether, or to what extent, there is an emerging idea of 'cosmopolitan sovereignty' which attempts to accommodate the normative value of both state and individual actors.

Chevron, Ecuador, Canada

Ecuadorian Plaintiffs are seeking to enforce the $18.2 Ecuadorian judgment against Chevron in Canada. This piece of news was published yesterday by Roger Alford (Opinio Iuris), with a link to a copy of the Statement of Claim and his own opinion on the chances of the claim for recognition. Worth reading for those interested in the fate of this unique case.

U.S. Symposium on Forum Non Conveniens and Enforcement of Foreign Judgments

Letters Blogatory is currently holding a very interesting online symposium on Forum Non Conveniens and Enforcement of Foreign Judgments.

Contributors include Ronald Brand, Cassandra Burke, Christopher Whythock, Douglas Cassel, Aaron Marr Page.

Smits on Party Choice and the Common European Sales Law

Jan M. Smits, Professor of European Private Law at Maastricht University Faculty of Law – Maastricht European Private Law Institute (M-EPLI) and Research Professor of Comparative Legal Studies at University of Helsinki – Center of Excellence in Foundations of European Law and Polity has posted **"Party Choice and the Common European Sales Law, or: How to Prevent the CESL from**

Becoming a Lemon on the Law Market" on SSRN. The paper can be downloaded here. The abstract reads as follows:

> *Optional legal regimes, such as the Proposal for a Regulation on a Common European Sales Law (CESL), must derive their success from being chosen by parties. This contribution asks on what conditions it is dependent whether parties will choose for an optional regime such as the CESL. This requires a clear view of the added value of so-called vertical jurisdictional competition, of the preferences of business and consumers, and of the choices available to contracting parties when designing their contractual relationship. It is argued that in order to be an attractive competitor on the law market, the proposed CESL must meet three requirements. First, it must be significantly different from existing options by offering more innovative solutions, reflecting an alternative view of contractual justice or offering a wider scope of application. Secondly, parties should be able to easily recognize the benefits of a choice for the CESL, calling for innovative ways of marketing such as user-based rankings. Thirdly, the costs of making the CESL applicable must be low compared to other available options. Only if these requirements are met – which is not the case with the present Proposal – it is avoided that CESL turns into a lemon on the European law market.*

Folkman on International Judicial Assistance

Theodore J. Folkman, who practices at Murphy & King, P.C. in Boston, has just published International Judicial Assistance for Massachusetts Lawyers. Many readers will know Ted's work from Letters Blogatory, the Blog of International Judicial Assistance and one of the great and most active blogs in North America on international civil procedure.

> *In a global economy, litigators are increasingly dealing with foreign parties, witnesses, evidence, and judgments in the course of representing their clients.*

International Judicial Assistance offers clear, practical guidance on the law, procedure, and best practices for accomplishing a number of essential actions requiring international judicial assistance: serving process, obtaining depositions and documentary evidence, and enforcing foreign judgments and arbitration awards. With frequent practice notes, sample forms, and concrete explanations, International Judicial Assistance is an indispensable resource for any litigator.

I think that one of the great advantages of Folkman's book is that it does not only deal with issues which are common to all U.S. states (either because they are governed by federal law, or by an international convention), but it also presents in details the particular rules of one state (Massachusetts) for other issues. Many readers outside of the United States will appreciate to get clear answers on all issues, even when they are governed by state law.

More details on the book can be found here.

Italian Society of International Law's XVII Annual Meeting (Genova, 31 May – 1 June 2012)

On 31 May – 1 June 2012, the **Italian Society of International Law** (Società Italiana di Diritto Internazionale – SIDI) will hold its **XVII Annual Meeting at the University of Genova**. The conference is dedicated to "L'Unione europea a vent'anni da Maastricht: verso nuove regole" (European Union 20 Years After the Maastricht Treaty: Towards New Rules) (see the complete programme here).

The opening session, in the afternoon of Thursday 31 May, will be devoted to international economic law, focusing on the euro crisis ("Diritto internazionale dell'economia e crisi dell'euro"). In the morning of Friday, 1 June, the meeting

will be structured in two parallel sessions, respectively dealing with international trade law ("Unione europea e diritto del commercio internazionale") and private international law ("Le nuove sfide del diritto internazionale privato e processuale europeo"). The final session (Friday 1 June, afternoon) will analyse the effects of EU Law on national procedural law of the Member States ("Gli effetti del diritto dell'Unione europea sul diritto processuale nazionale").

Here's the programme of sessions 2-4:

Friday, 1 June 2012 (parallel sessions: 9h00 – 13h00)

Unione europea e diritto del commercio internazionale (venue: Facoltà di Giurisprudenza, Aula Magna)

Chair: *A. Mazzoni* (Univ. of Milan)

- *F. Marrella* (Univ. of Venice and EIUC): Unione europea e investimenti esteri;
- *P. Kindler* (Univ. of Munich): Crisi dell'impresa e insolvenza transnazionale;
- *L. Radicati di Brozolo* (Catholic University of Milan): *Corporate governance* tra autonomia privata, norme e *best practices*;
- *D. Gallo* (Univ. LUISS – Guido Carli of Rome): *Golden shares* e diritto dell'Unione europea: sviluppi e prospettive tra mercato interno ed investimenti extracomunitari;
- *G. Peroni* (Univ. of Milan): Gli aiuti di stato alle imprese in tempo di crisi e loro compatibilità rispetto alle regole del commercio europeo ed internazionale.

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Le nuove sfide del diritto internazionale privato e processuale "europeo" (venue: Facoltà di Giurisprudenza, Aula Meridiana)

Chair: *F. Pocar* (Univ. of Milan)

- *H. Kronke* (Univ. of Heidelberg): La legge applicabile alla responsabilità e alla disciplina delle *intermediated securities*;
- *S. Bariatti* (Univ. of Milan): Abuso del diritto, conflitti di leggi e diritto del commercio internazionale;

- *B. Nascimbene* (Univ. of Milan): Operatività e limiti del mutuo riconoscimento nella circolazione delle sentenze e degli atti;
- *A. Leandro* (Univ. of Bari): Verso il futuro sequestro europeo su conti bancari nel bilanciamento tra tutela del creditore e tutela dei diritti fondamentali del debitore;
- *M. Maltese* (Univ. of Rome "Tor Vergata"): Le forme di cooperazione internazionale nelle procedure di insolvenza transfrontaliere.

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Friday, 1 June 2012 (final session: 14h30 – 19h00)

Gli effetti del diritto dell'Unione europea sul diritto processuale nazionale (venue: Facoltà di Giurisprudenza, Aula Magna)

Chair: *C. Consolo* (Univ. of Padova)

- *E. Cannizzaro* (Univ. of Rome "La Sapienza"): Diritto dell'Unione europea e processo civile;
- *R. Mastroianni* (Univ. of Naples "Federico II"): Diritto dell'Unione europea e processo penale;
- *L. Daniele* (Univ. of Rome "Tor Vergata"): Diritto dell'Unione europea e processo amministrativo;
- *P. De Pasquale* (University LUM "Jean Monnet"): Diritto dell'Unione europea e procedimenti davanti alle autorità indipendenti;
- *P. Ivaldi* (Univ. of Genova): Diritto dell'Unione europea e processo costituzionale.

Final Report: *S.M. Carbone* (Univ. of Genova).

Two New Titles from Prof. de

Miguel (Publicly Accessible)

Two new titles from Prof. Pedro de Miguel (Universidad Complutense, Madrid), written in English, are to be found now in the institutional repository of the Universidad Complutense de Madrid. The first, "Transnational Contracts Concerning the Commercial Exploitation of Intengible Cultural Heritage" (click here), is included in the book *Il patrimonio culturale intangibile nelle sue diverse dimensioni*, edited by T. Scovazzi, B. Ubertazzi y L. Zagato, based on the proceedings of the a conference held in Novedrate in April 2011. The second, entitled "International Conventions and European Instruments of Private International Law: Interrelation and Convention" (here), is one of the chapters of the book *Quelle architecture pour un code européen de droit international privé,* edited by M. Fallon, P. Lagarde, S. Poillot Peruzzetto, based on a colloquium held in March 2011 at the University of Toulouse (see G. Buono's post).

French Conference on Optional Harmonization

The University of Strasbourg will host a conference on Optional Harmonisation: Theory and Practical Applications on June 8th, 2012.

Topics will include the law of sales, intellectual property, company law and inheritance.

The full programme can be found here.

Briggs on Comity in Private International Law

The latest volume of Recueil des cours, published by The Hague Academy of International Law, has recently been released. It contains an article by Adrian Briggs from the University of Oxford on "The Principle of Comity in Private International Law". The abstract reads as follows:

> *The lectures examine the concept of comity, drawing particular attention to the twin principles of respect for sovereign acts done within the territory of a sovereign, and non-interference with the exercise of that power. They seek to show how rules on jurisdiction, foreign judgments, judicial assistance (and, to a limited extent, choice of law) are derived from and honour the principle of comity; and assess certain new developments in private international law in terms of their compatibility with the principle of comity.*

The complete table of contents is available here.

Stigall on U.S. Extraterritorial Jurisdiction

Dan Stigall, who works at the U.S. Department of Justice, has posted International Law and Limitations on the Exercise of Extraterritorial Jurisdiction in U.S. Domestic Law on SSRN.

> *With the dramatic rise in the frequency and scope of transnational criminal activity and the modern phenomenon of globalization, the interrelationship between international law and U.S. domestic law has come into sharper focus. From issues relating to international terrorism to more banal matters with distinct international dimensions, national courts in the modern era find themselves deciding cases with significant international elements and which*

have the potential to impact relations between sovereigns on the international plane. One area which is implicated across a broad range of legal topics and which has a natural propensity to affect international relations is the assertion of extraterritorial jurisdiction. This is due to the inherently conflict-generative nature of extraterritoriality.

In grappling with the need to address transnational issues in the context of a national legal system, domestic courts have increasingly looked to international legal principles, resulting in a level of penetration of international law in the national legal order. This Article explores the degree to which international law has permeated U.S. jurisprudence governing the exercise of extraterritorial jurisdiction over transnational criminal activity and the degree to which international law has been used by U.S. courts to limit or empower extraterritorial jurisdiction. Specific focus is given to the interrelationship between the limits imposed by international law, such as the "rule of reasonableness," and due process limitations imposed by U.S. courts.

In reviewing a broad spectrum of U.S. judicial decisions, this Article demonstrates that the justifications for and against the exercise of extraterritorial jurisdiction in U.S jurisprudence are multifarious, revealing distinct analytical strata that are dependent upon the nature of the law being applied extraterritorially and the conduct regulated. For instance, regulatory laws impacting commercial markets have been made the subject of an analysis that is distinct from analysis applied to other forms of transnational criminal activity. Moreover, due to a split in U.S. jurisprudence, the analysis applied to that latter group of transnational crimes (those that do not impact international commercial markets), will further depend upon the judicial district.

This Article posits that the different approaches to these different sorts of legislation are entirely justifiable (and even logically necessary) due to the very obvious differences between civil actions involving U.S. antitrust law and criminal statutes that take on a transnational focus. Moreover, by understanding the role international law plays in each of these analyses, the similarities of the undergirding rationales, as well as the differences and potential dangers, policymakers and legal actors can work to clarify this otherwise discordant and fractured legal landscape and articulate a unified view of international law and limitations on the exercise of extraterritorial jurisdiction in U.S. domestic law.

The paper is forthcoming in the *Hastings International and Comparative Law Review*.